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lien for the balance of the purchase price, and then only to the extent of the deficiency after a sale of the land, such grantee, prior to such sale, was not entitled to appeal under Code 1904, § 3454, giving a party the right of appeal from an interlocutory decree adjudicating the principles of a cause.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 934-936; Dec. Dig. § 150.* 1 Va.-W. Va. Enc. Dig. 442; 14 Va.-W. Va. Enc. Dig. 64; 15 Va.-W. Va. Enc. Dig. 54.]

3. Appeal and Error (§ 150*)—Right of Appeal—Party Secondarily Liable—Statutes.—Code 1904, § 3455, provides that no petition shall be presented for appeal from or writ of error or supersedeas to any final judgment, decree, or order of any court, where the controversy is for a matter less in value or amount than \$300, unless there be drawn in question a freehold or franchise, or the title or bounds of land, or the order of the State Corporation Commission, or some matter not merely pecuniary. Held, that where a grantee of the timber on certain land was decreed only secondarily liable for a deficiency occurring on a sale of the land in satisfaction of a vendor's lien, such grantee, prior to such sale, when only it could be ascertained that a deficiency in excess of \$300 remained, could not appeal from such decree.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 934-946; Dec. Dig. § 150.* 1 Va.-W. Va. Enc. Dig. 477; 14 Va.-W. Va. Enc. Dig. 71; 15 Va.-W. Va. Enc. Dig. 57.]

Appeal from Circuit Court, Tazewell County.

Suit by the Coal Mountain Mining Company against R. A. Ayers and others. From a decree in favor of complainant, but holding the C. L. Ritter Lumber Company, Incorporated, secondarily liable only for a balance due on the sale of certain land to satisfy complainant's vendor's lien, the Lumber Company appeals. Dismissed.

Geo. W. St. Clair, of Tazewell, for appellant.

Greever & Gillispie, of Tazewell, for appellee.

MULLINS *v.* COMMONWEALTH.

Sept. 11, 1913.

[79 S. E. 324.]

1. Indictment and Information (§ 87*)—Form and Requisites—Allegation of Time—Surplusage.—Where an indictment charged that accused on the — day of —, in the year 19—, and within the last two years, did unlawfully sell, by retail, whisky, etc., with—

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

out a license, it sufficiently charged that the sale was within the two-year statutory period of limitations; the balance of the allegation as to the time being meaningless and surplusage.

[Ed. Note.—For other cases, see Indictment and Information, Cent. Dig. §§ 244-255; Dec. Dig. § 87.* 7 Va.-W. Va. Enc. Dig. 428; 15 Va.-W. Va. Enc. Dig. 482.]

2. Criminal Law (§§ 281, 282*)—Pleading—Plea—Right to Demurrer or Reply.—Where a plea in abatement is filed to an indictment, the commonwealth may demur or reply, but it cannot do both.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 652, 653; Dec. Dig. §§ 652, 653; Dec. Dig. §§ 281, 282.* 1 Va.-W. Va. Enc. Dig. 24; 14 Va.-W. Va. Enc. Dig. 4.]

3. Criminal Law (§ 1144*)—Appeal—Presumption—Withdrawal of Plea in Abatement.—Accused having pleaded in abatement, the commonwealth demurred to the plea, and, the demurrer having been overruled, the commonwealth offered to reply, to which accused objected on the ground that the commonwealth was entitled to only one answer to the plea. This objection having been overruled, the court permitted the commonwealth to reply, to which ruling accused excepted but joined issue on the replication which was tried to the court. Held that, under such circumstances, the demurrer would be treated as having been withdrawn, so as to afford the commonwealth the right to reply, though the record did not show that fact.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. §§ 2736-2764, 2766-2771, 2774-2781, 2901, 3016-3037; Dec. Dig. § 1144.* 1 Va. W. Va. Enc. Dig. 612; 14 Va.-W. Va. Enc. Dig. 100; 15 Va.-W. Va. Enc. Dig. 72.]

4. Grand Jury (§ 34*)—Proceedings—Presence of Attorney for Commonwealth.—Code 1904, § 3988, provides that it shall be unlawful for any attorney for the commonwealth to go before any grand jury during its deliberations, except when duly sworn to testify as a witness, that he may advise the foreman or any member in relation to the discharge of their duties. Held that, where a commonwealth's attorney did not advise the grand jury to return the indictment in question against the defendant, and did not know of it until the presentment was made, and was not in the room when the jury was deliberating thereon, the validity of the indictment was not affected by the fact that such attorney went into the grand jury room to consult with the jury in response to their call, though not as a witness, when the jury was in session and during their deliberation.

[Ed. Note.—For other cases, see Grand Jury, Cent. Dig. §§ 73, 85; Dec. Dig. § 34.* 6 Va.-W. Va. Enc. Dig. 756.]

5. Intoxicating Liquors (§ 134*)—"Liquor."—The term "liquor," in its more common application, implies spirituous fluids, whether fer-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

mented or distilled, such as brandy, whisky, gin, beer, and wine (citing 5 Words and Phrases, 4181, 4182).

[Ed. Note.—For other cases, see Intoxicating Liquors, Cent. Dig. §§ 142-144; Dec. Dig. § 134.* 8 Va.-W. Va. Enc. Dig. 4; 15 Va.-W. Va. Enc. Dig. 532.]

6. Intoxicating Liquors (§ 216*)—Illegal Sale—Indictment—“Whisky.”—“Whisky” is a spirit distilled from grain, barley, maize, wheat, rye, etc., and the use of the term “whisky” in an indictment charging the defendant with selling intoxicating liquor, to wit, whisky, is sufficient to show the sale of fermented or distilled liquor, within the statute prohibiting the sale thereof (citing 8 Words and Phrases, 7445).

[Ed. Note.—For other cases, see Intoxicating Liquors, Cent. Dig. §§ 230-233; Dec. Dig. § 216.* 8 Va.-W. Va. Enc. Dig. 4; 15 Va.-W. Va. Enc. Dig. 532.]

7. Intoxicating Liquors (§ 223*)—Unlawful Sale—“Corn Liquor”—Variance.—Evidence that prosecuting witness purchased “corn liquor” from accused was sufficient to sustain a conviction under an indictment charging the unlawful sale of “whisky, brandy, gin, beer, malt liquors, and mixtures thereof.”

[Ed. Note.—For other cases, see Intoxicating Liquors, Cent. Dig. §§ 263-274; Dec. Dig. § 223.* 8 Va.-W. Va. Enc. Dig. 28; 15 Va.-W. Va. Enc. Dig. 539.]

8. Intoxicating Liquors (§ 132*)—Sale without License—General Revenue Law—Local Option Law—Offenses—Jurisdiction.—Act March 25, 1902 (Acts 1901-02, c. 307), prohibiting the sale of liquors, either wholesale or retail, in certain named counties, did not render the general revenue law and the Byrd Liquor Law, making the sale of liquors without a license an offense punishable in the circuit court, inapplicable to such counties.

[Ed. Note.—For other cases, see Intoxicating Liquors, Cent. Dig. § 141; Dec. Dig. § 132.* 8 Va.-W. Va. Enc. Dig. 22; 14 Va.-W. Va. Enc. Dig. 585.]

Error to Circuit Court, Dickenson County.

Melvin Mullins was convicted of selling whisky without a license, and he brings error. Affirmed.

Sutherland & Sutherland, of Clintwood, for plaintiff in error.
The Attorney General, for the Commonwealth.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.